



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1996

Mr. Christopher B. Gilbert
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR96-0378

Dear Mr. Gilbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38565.

The Texarkana Independent School District (the "school district"), which you represent, received a request for "each and every detailed statement from the Bracewell Patterson Law Firm in Houston, Texas for the school years of 1993-94; 1994-95; 1995-96." You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. You have submitted samples of the documents for which the school district claims an exception. We have considered the exceptions you claimed and have reviewed the sample documents.

Initially, you state that the school district officials asked the requestor "why he was requesting the documents." You further state that you are concerned that the requestor is seeking information for "other purposes." A governmental body is not allowed to inquire as to the purpose for which information is being sought and may not consider the motives of the requestor in handling a request for information. Gov't Code § 552.222(a); Open Records Decision No. 542 (1990).

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The school district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)

at 4. The school district must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that there is a grievance currently pending before the Commissioner of Education between the school district and Ms. Ethel Jones, a former principal at Dunbar Elementary School. You also claim that several investigations by the Office of Civil Rights were instigated as a result of Ms. Jones' removal. Additionally, you state that several other school district employees have filed lawsuits against the school district after they were reassigned to other positions after Ms. Jones' departure. Finally, you claim that Ms. Jones has filed a federal lawsuit regarding her reassignment. We are assuming for purposes of this ruling that the bills with the subject matter "Grievance" relate to the pending grievance between the school district and Ms. Jones. We conclude that the school district may withhold the highlighted information on the bills that are entitled "Grievance" under section 552.103(a) of the Government Code.¹ We also conclude that the school district may withhold the highlighted information on one of the bills for a matter entitled "Floy Gulley" if that matter is still pending. Finally, as the Office of Civil Rights investigation also arises from Ms. Jones' removal, we conclude that the information is related to the pending grievance. Therefore, the school district may withhold the highlighted information on the bills that are entitled "OCR Investigation."

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. You have marked information that you claim is protected from disclosure because it reveals attorney-client communications. We conclude that some of the marked information is excepted from disclosure by section 552.107(1) of the Government Code. However, some of the information is not "privileged information." Additionally, the school district has not established how some information is related to either reasonably anticipated or pending litigation so that section 552.103 would except the information from disclosure. Further, you have not explained to us how some of the persons conferred with are clients or other attorneys to establish the applicability of the attorney-client privilege. We are not aware of any statute or

¹We assume, based on your February 7, 1996 correspondence, that the school district is claiming that only the highlighted portions of the submitted bills are excepted from disclosure under sections 552.103(a) and 552.107(1).

attorneys to establish the applicability of the attorney-client privilege. We are not aware of any statute or privacy right that would except the information from disclosure under section 552.101. Therefore, the school district may not withhold from disclosure the information we have marked under section 552.107(1).

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 38565

Enclosures: Marked documents

cc: Mr. Carl Teel
424 Northwest Drive
Wake Village, Texas 75501
(w/o enclosures)